

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: BERNARD L. MADOFF
INVESTMENT SECURITIES LLC

IRVING H. PICARD, *Trustee for
the Liquidation of Bernard L.
Madoff Investment Securities,
LLC and Bernard L. Madoff,*

Plaintiffs,

v.

20 CV 1029 (JMF)

RAR ENTREPRENEURIAL FUND,
LTD.,

Defendant.

New York, N.Y.
March 3, 2022
9:15 a.m.

Before:

HON. JESSE M. FURMAN,

District Judge

APPEARANCES

BAKER & HOSTETLER

Attorneys for Plaintiff

BY: BRIAN WOO HYON SONG

LAN HOANG

JAMES WATKINS

CHAITMAN LLP

Attorneys for Defendant

BY: HELEN DAVIS CHAITMAN

LANCE GOTTHOFFER

1 A. There's something called a form ADV which the investment
2 advisory firm has to fill out the form ADV. I was an
3 investment adviser representative of a firm, so my information
4 went into the ADV about who I was, what was my background, did
5 I have any criminal background. They want to know all this if
6 they're going to license you to give advice to people. And so
7 I would have to review those forms before they were filed with
8 both the State of Maryland, in my case, and the SEC.

9 Q. And who was the form ADV filed with?

10 A. Who was it filed with?

11 Q. Yes.

12 A. It's filed with the Securities & Exchange Commission and
13 the particular state that you are doing business in.

14 Q. Are you familiar with -- as a registered investment
15 adviser, are you familiar with any other documents that an
16 investment adviser has to file with the SEC?

17 A. Other than the ADV, I mean there are annual reports about
18 your business that has to be filed with the SEC, there's
19 information for instance -- luckily it never happened to me,
20 but if I did something wrong while I was advising somebody and
21 they filed a complaint with what is called FINRA. FINRA is the
22 governing agency that regulates brokers. I would need to
23 notify the SEC of that. And I think, if that's what you're
24 asking, those are the ones that come to mind.

25 Q. With respect to the SEC, are you familiar with what is

1 called a Form BD?

2 A. Yes, the Form BD is a form filed with the SEC. It's a
3 broker-dealer form, and it's for a business that is doing
4 business in the financial aspect of advisory broker-dealer
5 market making type businesses. You need to file a Form BD with
6 the SEC to disclose information about who you are, what you're
7 doing, how long you've been in business, basic demographics and
8 questions that the SEC wants to know to be able to protect the
9 public. That's the basic purpose of it.

10 Q. And you might have mentioned this before, but does your
11 expertise also extend to computer forensics?

12 A. It does. I think I mentioned that earlier. I went owned a
13 computer forensics company. I have undergone specific training
14 in how to conduct computer examinations. When we talk computer
15 forensics, it's not finding the email sitting in someone's
16 inbox, it's going beneath the hood and looking with special
17 software that if someone deleted files that software can find
18 it. If someone sent information out on a thumb drive, I can
19 tell what information went out on that thumb drive through kind
20 of underneath the system. It's akin to getting into your car,
21 lifting the hood, there's a lot of electronics, something
22 underneath is making it all work, and that's what computer
23 forensics looks at. Yes, I do have expertise in that.

24 Q. Mr. Dubinsky, how many times have you offered expert
25 opinions in fraud cases?

1 Excuse me. Let me rephrase.

2 Mr. Dubinsky, can you tell us what this document is.

3 A. This is a form DB for the Securities and Exchange

4 Commission, and it is for Bernard L. Madoff. You can see --

5 and this is for an application --

6 THE COURT: Don't describe the contents of it, please.

7 Next question.

8 MS. HOANG: Yes.

9 Q. Did you review this document as part of your investigation
10 into the sole proprietorship?

11 A. I did.

12 Q. Is this the type of document that someone in the areas of
13 your expertise would reasonably rely on in informing opinions
14 about the sole proprietorship?

15 A. It is.

16 MS. HOANG: Your Honor, at this time I'd like to have
17 the form BD admitted into evidence and published to the jury.

18 THE COURT: And, Mr. Dubinsky, can you tell us where
19 you saw this or where you obtained this document.

20 THE WITNESS: This was in documents that I was
21 provided access to during the investigation. I don't see a
22 Bates -- there's a public Bates number. So this would have
23 been obtained by the trustee and provided to me when I had
24 access to documents.

25 MS. HOANG: Your Honor, this is an exhibit on -- I

1 believe the defendants have the same exhibit, if I'm not
2 mistaken.

3 THE COURT: All right. Any objection, Ms. Chaitman?

4 MS. CHAITMAN: No, your Honor.

5 THE COURT: Admitted.

6 (Plaintiff's Exhibit TX51 received in evidence)

7 THE COURT: And you may publish. Go ahead.

8 MS. HOANG: Thank you, your Honor.

9 Is it published to the jury?

10 THE COURT: It is.

11 MS. HOANG: Thank you.

12 Q. Could you continue, Mr. Dubinsky, and tell us what this
13 document is.

14 A. Yes. So this is form BD, Securities and Exchange
15 Commission. This is an application for registration as a
16 broker and dealer with the Securities and Exchange Commission.

17 This is an application for Bernard L. Madoff. There's
18 a date. I think it's down at the bottom. It was 1959. You
19 can see when it was received by the SEC, December 31, 1959.

20 So it was filed at some point prior to that, received
21 by them on the 31st, according to the stamp here. If we now go
22 back up to the middle section -- let's start up at the top --
23 it shows this is an application for registration. So you can
24 either check the box for registration or an amendment. This is
25 for the initial registration.